

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---------------------------------------|---|--|
| IRVIN DANIEL LINDSEY, |) | |
| Petitioner, |) | Civil Action No. 12-64 Erie |
| |) | |
| v. |) | Senior District Judge Maurice B. Cohill |
| |) | Magistrate Judge Susan Paradise Baxter |
| DISTRICT ATTORNEY'S OFFICE |) | |
| OF ERIE COUNTY, <u>et al.</u>, |) | |
| Respondents. |) | |

MEMORANDUM ORDER

This habeas action filed by Petitioner, Irvin Daniel Lindsey, pursuant to 28 U.S.C. § 2254 was referred to United States Magistrate Judge Susan Paradise Baxter for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Local Rules for Magistrate Judges. On September 5, 2012, the Magistrate Judge issued a Report and Recommendation ("R&R") [ECF No. 29] in which she recommended that the petition be denied with respect to each of Petitioner's claims and that a certificate of appealability ("COA") be denied. Petitioner has filed Objections [ECF Nos. 30 and 31] to the R&R. Furthermore, the Magistrate Judge recommended that the Erie County Court of Common Pleas' motion to dismiss and strike [ECF No. 22] be granted.

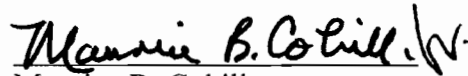
Where, as here, Objections have been filed, the Court is required to make a *de novo* determination as to those portions of the R&R to which objections were made. See 28 U.S.C. § 636(b)(1). Accordingly, the Court has carefully examined *de novo* all arguments raised by Petitioner in his Objections and the Court agrees with the Magistrate Judge that he is not entitled to habeas relief or a COA on any of his claims. Petitioner's Objections are overruled and the Court approves and adopts the R&R in its entirety.

After *de novo* review of the documents in the case, together with the Report and Recommendation of the Plaintiff's Objections, the following Order is entered:

And now to-wit, this 3rd day of October 2012, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

1. The Petitioner's Petition for Writ of Habeas Corpus [ECF No. 7] is DENIED.
2. Defendant Erie County Court of Common Pleas' Motion to Dismiss [ECF No. 22] is GRANTED.

IT IS FURTHER ORDERED that a Certificate of Appealability is DENIED. The Report and Recommendation of Magistrate Judge Baxter dated September 5, 2012 [ECF No. 29] is adopted as the Opinion of the Court. The Clerk shall mark this case **CLOSED**.



Maurice B. Cohill
Senior United States District Court Judge
Western District of Pennsylvania